

BAMCO EXPLORATION, INC.

IBLA 83-926

Decided November 28, 1983

Appeal from decision of Nevada State Office, Bureau of Land Management, rejecting mining claim filings. N MC 507 through N MC 511 and N MC 572 through N MC 575.

Vacated and remanded.

1. Federal Land Policy and Management Act of 1976; Recordation of Mining Claims and Abandonment--Mining Claims: Abandonment

Where copies of location notices of mining claims were filed with the Bureau of Land Management in 1977 before promulgation of regulations pursuant to sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), and where BLM later called upon the claim owner to pay the required filing fees, without setting a time limit for compliance, it is error for BLM to reject the mining claim filings because the first check submitted for payment of the filing fees was returned as uncollectible, although the claim owner had replaced that check with a guaranteed remittance upon notification.

APPEARANCES: George G. Holden, Esq., Battle Mountain, Nevada, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Bamco Exploration, Inc. (Bamco) has appealed the July 27, 1983, decision of the Nevada State Office, Bureau of Land Management (BLM), which rejected the location notices for the unpatented Texas #1 and #2, Bear #1, #2, #3, Bar, and Bar #1, #2, and #3 lode mining claims, N MC 507 through N MC 511 and N MC 572 through N MC 575, because the check for filing fees tendered with the location notices in 1977 was returned, marked "not sufficient funds" by the bank. The decision noted that a notice of location cannot be accepted if not accompanied by a service fee of \$5 per claim and held that since an uncollectible check constituted nonpayment of the service fees, the claims were rejected.

Copies of the location notices for the claims at issue were submitted to BLM on January 24, 1977, as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976). The regulations governing the recordation of mining claims were published January 27, 1977, at 42 FR 3500. These regulations, for the first time, included the requirement of payment of a one-time service fee of \$5 per claim for recordation with BLM. By letter of February 8, 1977, BLM advised Bamco of the regulation that a filing fee of \$5 per claim was required, and requested payment for the claims at issue. No time for compliance was set forth in the BLM letter. Bamco submitted its check for \$45 for nine claims on March 14, 1977. That check was returned by the bank as uncollectible. By advice dated April 1, 1977, BLM notified Bamco of the uncollectible check and requested prompt replacement by a guaranteed remittance. On April 18, 1977, Bamco submitted an American Express money order in the amount of \$45.

The BLM decision improperly rejected the mining claim location notices, as the location notices were filed with BLM before the regulation requiring the payment of a \$5 filing fee was published. When advised of the regulatory requirement, Bamco complied, but with an uncollectible check. Upon notice of the uncollectible check, Bamco replaced the check with a money order, so the required filing fees were paid. Inasmuch as no time limit was imposed by BLM for submission of the filing fees, we cannot affirm the BLM decision on appeal.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated, and the cases are remanded to BLM for further appropriate action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

James L. Burski
Administrative Judge

